Quid Novi

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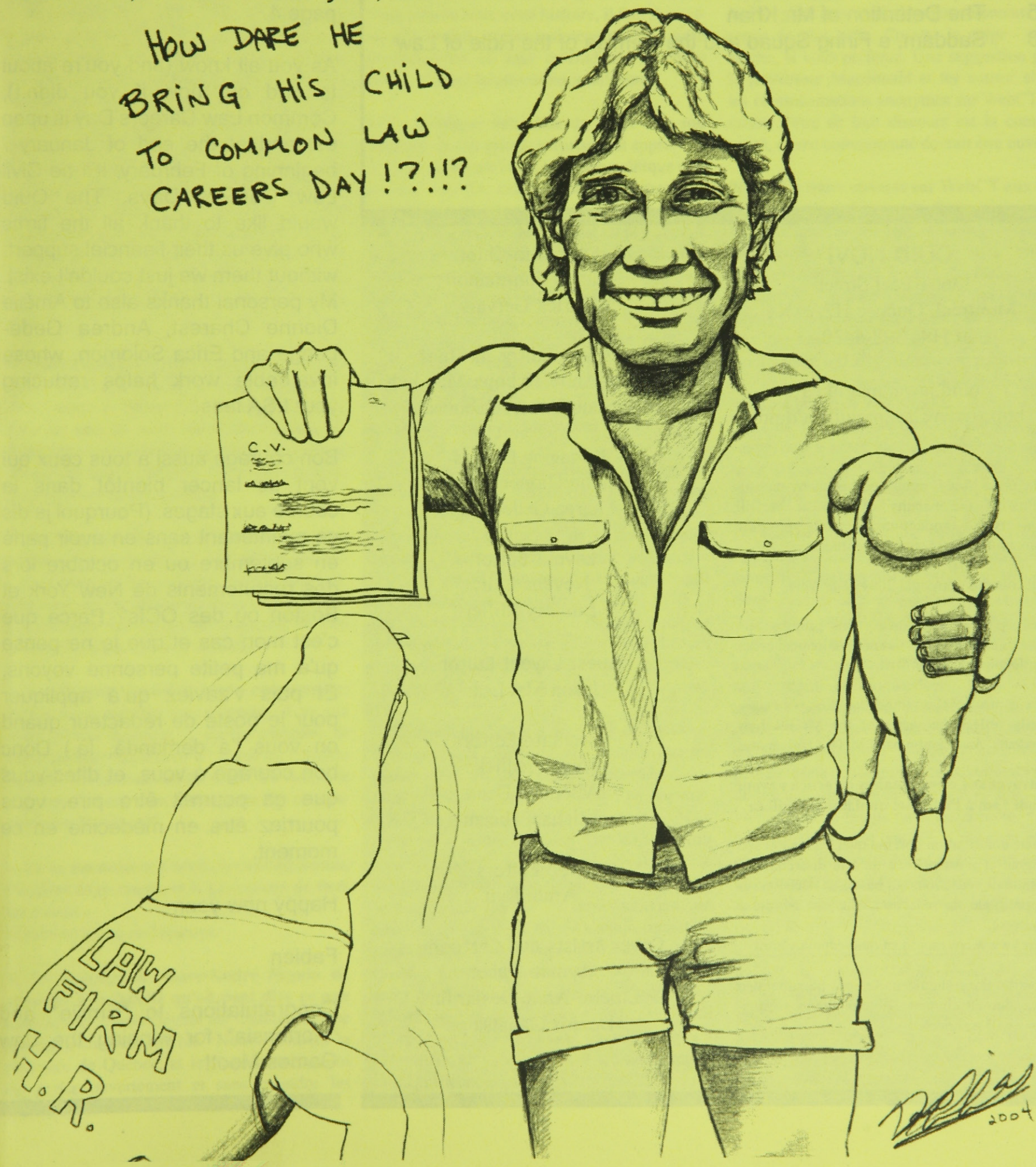

In This Issue...

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Editor's Note...

You're back, and so is your Quid.

Patrick has written an editorial on the demographic shift in Québec, but since it would have had to be in 0½ pt font in order to fit into this column, we decided to push it to page 4.

As you all know (and you're about to find out now if you didn't), Common Law Careers Day is upon us, and at the end of January / beginning of February, it'll be Civil Law Careers Days. The Quid would like to thank all the firms who give us their financial support: without them we just couldn't exist. My personal thanks also to Amélie Dionne Charest, Andrea Gede-Lange and Erica Solomon, whose invaluable work helps reducing your LSA fees.

Bon courage aussi à tous ceux qui vont se lancer bientôt dans la course aux stages. (Pourquoi je dis ça maintenant sans en avoir parlé en septembre ou en octobre lors des recrutements de New York et Boston ou des OCIs? Parce que c'est mon cas et que je ne pense qu'à ma petite personne voyons. Et puis v'zaviez qu'à appliquer pour le poste de rédacteur quand on vous l'a demandé, là.) Donc bon courage à vous, et dites-vous que ça pourrait être pire, vous pourriez être en médecine en ce moment.

Happy new year,

Fabien

Congratulations to *Émilie* and *Hortensia* for winning the Law Games Moot!

Obiter dicta: Top dix des meilleurs et pires moments du trimestre d'automne

par Jason MacLean (Law I)

Voici venu le temps de la remise des notes. Je vous propose donc, en manière de bilan, ma sélection des grands moments du trimestre d'automne. Entendez par " ma sélection " que je ne suis pas idéologue, et donc absolument pas tenu à l'objectivité, et que mon seul critère en faisant ce choix plutôt qu'un autre est de stimuler la discussion et un sentiment de communauté. J'ai l'espoir qu'entre le langage et la rhétorique politique facile se trouve un espace discursif, non pour le débat ou la négociation, mais plutôt pour une conversation, qui exige la compréhension de l'autre. Mais oubliez tout ça, je n'ai aucune prétention scientifique, ni même sérieuse en fait. Ceci est un obiter dicta après tout...

1. L'orientation: Superbe ersatz de "En attendant Godot" ou d'un épisode de "Seinfeld" : c'est comme si rien ne s'était passé. Par contre, dans un sens ça a été formidable. Pourquoi? Parce que cela marquait le début de quelque chose: nos années de droit. Donc trois hourras pour le néant de l'orientation.

2. Le discours du doyen par intérim: J'ai malheureusement oublié l'essentiel de son discours, mais je me souviens l'avoir apprécié. Qui a dit que le droit était froid et rébarbatif? Un discours chaleureux et rassurant, un peu comme le calme avant la tempête.

3. Le discours de notre doyen cosmonaute: Après avoir survécu aux examens, il ne me reste qu'une question: à quelle catégorie le "fact pattern" appartient-il? Est-il de l'empire du droit ou du cosmos du droit? En fait, peu importe. Comme aime à dire notre doyen cosmonaute, "blast on!"

4. Le commentaire d'arrêt, le canned memo, l'infâme livre rouge, et le pire cours de tous les temps:
Mérite la palme de l'inutilité.

5. Le courage de Marc-André Séguin de montrer à la faculté qu'on peut dire ce que l'on pense: L'arrêt Séguin est maintenant une référence incontournable. Notre faculté, la province de Québec, et le Canada ont besoin de parler ouvertement et sans craindre les accusations gratuites. C'est l'histoire en train de se faire, un monument qui reste à créer. Mais pour la bâtir, cette histoire, il faut s'y mettre activement, et dès maintenant. C'est notre responsabilité en tant qu'étudiants de droit (présumément relativement intelligents).

6. La politique éditoriale du Quid - ou son absence: À ma grande surprise, j'ai appris que le Quid possèdait bel et bien une politique éditoriale; ceci dit, celle-ci est loin d'être suffisamment transparente. Avec le plus grand respect, la politique du Quid est un peu comme le principe de "dog's law" en droit commun. Vous n'avez qu'à demander à Jeff Derman ou Michelle Dean: ni Jeff ni Michelle (et, en général, ni même les auteurs, les lecteurs, ou les rédacteurs) ne profitent d'une politique informelle et malléable. La faculté, communauté normative, se doit de discuter de la liberté d'expression, de ce qu'elle implique et de la manière dont elle doit s'exercer.

7. Cinq victoires consécutives pour l'équipe trans-systémique "Superior Force" alias "Force Majeure"! Toutes mes excuses aux autres équipes de hockey de la faculté, mais l'équipe "Superior Force" - comme son nom le suggère - est un "événement [particulièrement] imprévisible et irrésistible" (art. 1470(2) C.c.Q.). (Le prochain match de cette équipe - extraordinaire, il va sans dire - se tiendra dimanche le 18 janvier à 13h00 à l'aréna McConnell.)

8. Le droit civil et le Code civil du Québec: Pour ceux qui n'auraient pas compris que les éditeurs du Quid ont passé des heures à réviser cette première tentative d'écriture en français, je suis anglophone. (Si si, je vous assure.) Mais après un semestre ici, je préfère déjà le droit civil - ou plutôt, je préfère principalement le droit trans-systémique. Moi, qui croyais travailler comme juriste de droit commun, un civiliste, voyez-vous ça! Ma subite affection pour l'autre livre rouge, le Code civil du Québec, est venue comme un choc, un étrange coup de foudre. C'est ainsi que chaque jour j'aborde au hasard des gens dans la rue et leur déclame un article du Code, question de m'assurer qu'ils ne vivent pas leur vie sans ignorer sa magnificence.

9. Pour un temps infinitésimal, avec la neige les gémissements cessèrent: Après un cessez-le-feu plus que bref, les gémissements ont repris de plus belle. Comme la neige - ou la sloche, si vous préférez. Une suggestion pour le professeur Macdonald et les autres: abolir les communications anonymes sur WebCT. La raison d'être de tout discours est la communauté, et une communauté devrait être ouverte.

9(bis). La lettre ouverte sur WebCT aux étudiants de première année: Bravo aux auteurs de cette lettre, superbe exemple des méfaits de la communication anonyme: des propos irréfléchis, erronés et injustes. La tâche (ou les compétences, pour être légaliste) des représentants de première année en est essentiellement une de communication et de sôcial: ce n'est évidemment pas un poste d'abord politique. Or nos représentantes sont à mon avis des organisatrices hors pair, et se sont acquittées de leur tâche de façon remarquable. Alors une petite suggestion à notre auteur anonyme: dans les mots de Jean Leloup dans "Le monde est à pleurer", "Next time, un peu d'effort."

10. Les examens - dont vous êtes (temporairement) débarrassés: Était-ce vraiment si inhumain? Maintenant au moins on sait comment étudier stratégiquement et, en même temps s'amuser (suggestion peu subliminale - peut-être en allant à un match de "Superior Force") et même contribuer aux communautés universitaire et montréalaise. Mais surtout, nous savons comment prendre le temps pour partager des conversations: réelles, véritables, des communications humaines sans arrière-pensée. Mais peut-être la plus importante leçon du premier semestre et - tant que j'y suis - de la vie, est que le temps nous est compté et que, parce qu'il nous est compté, il nous est particulièrement précieux. Nous avons une obligation morale envers nous-mêmes et envers les autres de ne jamais même oser imaginer s'ennuyer. ■

NDLR: As suggested by Jason, in order to make the Quid's editorial policy more transparent, it is now available from our website at http://www.law.mcgill.ca/quid/edpolicy.html. We encourage all Quid contributors to go have a look prior to submitting.

Le Déclin de l'Empire québécois (Don't Worry, It's in English...)

by Patrick Gervais (Law II)

The first of a new series of conferences held jointly by Radio-Canada and La Presse last December 3rd was entitled "Des Enfants pour le Québec". It centered on how low fertility rates in most developed nations would greatly impact all spheres of society in the next few decades. Québec's situation is distinct as its population is aging faster than the Rest of Canada's. Keynote speakers from Europe, the U.S. and Canada illustrated the consequences of this demographic shift and presented ways in which the decline could be quelled.

Opening remarks by **Lucien Bouchard** gave a somber picture of the future if his predictions should materialize. The fertility rate in Québec is 1.45 per women, while the Rest of Canada's is 1.51 and the U.S.A.'s is 2.07, close to the magical 2.1 required for a population to replace itself. As well as a dwindling fertility rate, Québec has one of the highest suicide rates in the world (3rd in the 20-24 male category) and in general 50% higher than the Rest of Canada. Demographics will have a hugely negative impact at the federal level as Québec's weight in Canada falls from a peak of 29% in the 1960's, to about 25% in the 90's and to less than 21% in 2025. By this time, more than 20% of the population will be over 65, creating a huge burden on health care demands, already taking up 42% of the provincial budget. "L'hédonisme est l'adage de la société actuelle" as Bouchard pointed out, and the population in general is not preoccupied by what promises to be the greatest social change in the next few decades in Québec.

Bouchard went on to brush the contrasting picture of the general state of mind of his generation in the 60's where optimism prevailed, from the Canadiens' winning streak to the Expo and the Quiet Revolution. It was the "printemps du Québec", where the undertaking of great projects was possible thanks in part to a young population. Today, partly due to this unlimited hope of past politicians for the future, the situation is worrisome. Québec's debt is close to 110 billion $, and only annual interests cost more than half the entire education budget. Healthcare accounts for 42% of the budget, and will only rise as the population ages. Given this "casse-tête comptable", Bouchard isn't surprised by the lack of interest of youth in politics. As predictions are uncertain, Bouchard remains confident in the future as he believes that "les enfants du Québec préparent d'autres printemps..."

Which social changes are responsible for this exceptional drop in fertility rates since the 1960's? Panelists were divided as for the main cause, but a shift in values to an ever more individualistically centered society was repeatedly brought up. The breakup of the traditional family, the recession of the influence of the Catholic Church, modern contraception methods and women's massive entry unto the job market, all have transformed childbearing from the social necessity it was before to a personal choice of parents often linked to their own self accomplishments and the development of a meaningful relationship with the child.

According to demographer **Évelyne Lapierre-Adamchyk**, the fundamental difference is not that families have shrunk; it is rather that less people are now having kids, about 25 % of Quebeckers. Her explanation is the shift in values, the dominating one being economical rationality, where one evaluates child upbringing as a series of costs in time, money and loss of freedom.

A dwindling and aging population will have 2 important effects on Québec's economy. First of all, the aging population will require more health services. People will live longer and healthier lives, and the healthcare system must adapt in order for it to be able to cope with the demands of this demographic shift. **Dr. Réjean Hébert**, who heads the Aging Institute of Canada, illustrated how the healthcare system must adapt to cut costs. Although home care only cost 10% of the equivalent treatment in a hospital, it accounts for a meager 3% of health expenses in Québec. The second important consequence, as explained by economist **Georges Matthews** is that Québec's population will actually start declining in 15 years, demand for goods will drop, and given the new ▶

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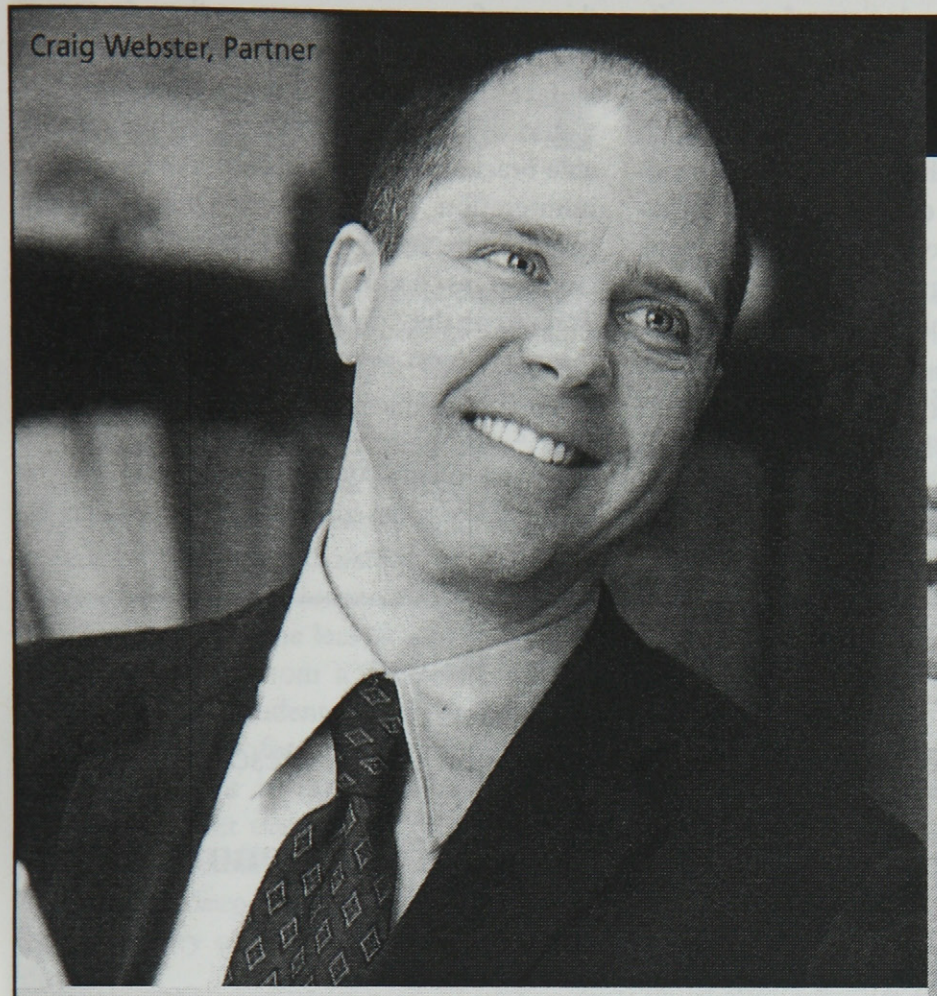

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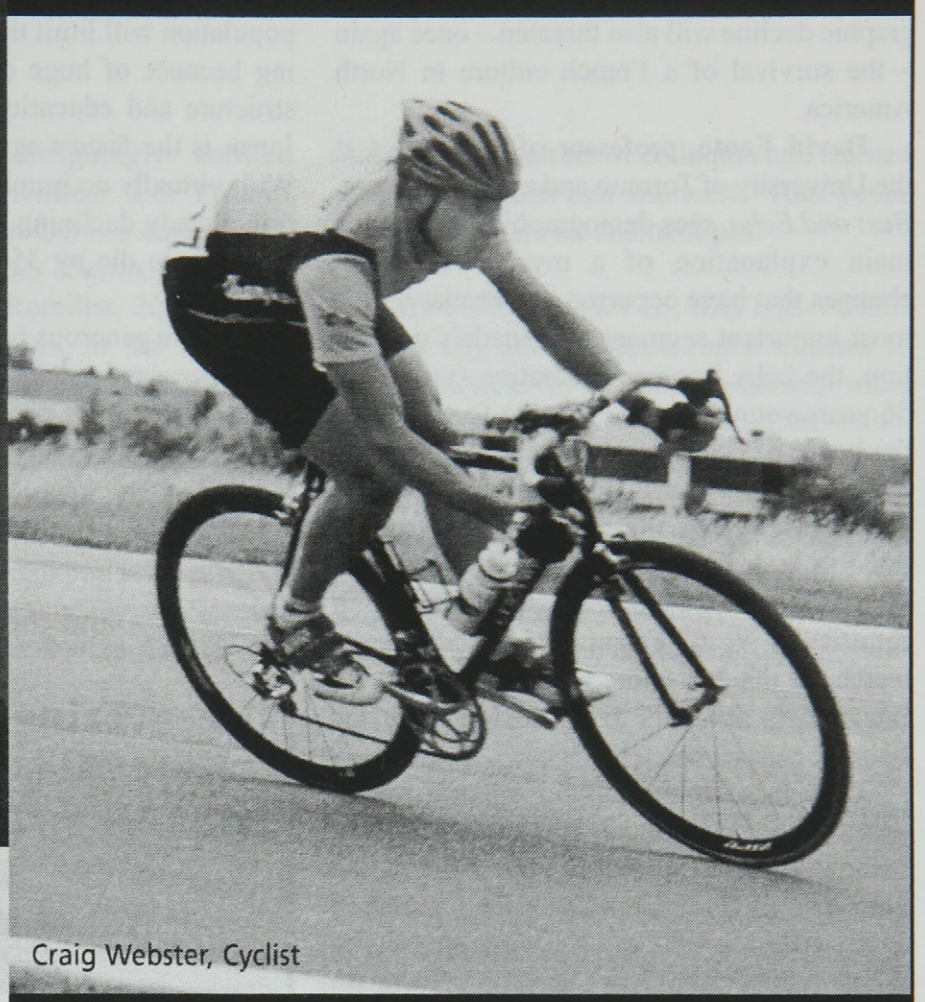

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powerhouses on the international front (China, India), Québec's economy will be unable to grow or even maintain itself by solely relying on exportation. This demographic decline will also threaten – once again – the survival of a French culture in North America.

David Foote, professor of economics at the University of Toronto and author of *Boom, Bust and Echo*, sees demographic shifts as the main explanation of a myriad of social changes that have occurred in Canada. As the most important segment of Canada's population, the baby boomer generation (today 37-56 years young) was the driving force behind the boom of center cities in the 60-70's (during their 20's), and responsible for their decline as well as the massive urban sprawl due to the demand for suburbs in the 80 and 90's (as the boomers were developing their families). Now becoming grandparents, watch for the ever more present form of nostalgic baby products designed to please the boomer generation.

Canada's demographic spread varies greatly from one region to another, Québec being the oldest province and Alberta the youngest. In Nunavut, 40% of the population is less than 15 years of age, while this figure drops to 20% overall in Canada. Cities retain the youngest population, due in part to the large student population and lifestyle catering more to yuppies than the countryside. In the U.S., Florida is the oldest state and Texas the youngest, greatly due to the massive Latin American population (with a fertility rate of 2.8).

Further south, Mexico is by far the youngest member of NAFTA, with 60% of its population under 30. In Europe, Italy is the oldest country, with a fertility rate of 1.2. As the population ages, the government is forced to pass unpopular legislation to cut costs because of a dwindling workforce. Spain follows with 1.3 and the scare of a population decline has made the government practically give away Spanish citizenship to any Spanish expat. France remains the exception in Europe, with a 1.9 fertility rate allowing it to present a cylinder-like population graph. Generous social policies for families are seen by many as a contributing factor to this high rate: leave of absence for parents, daycare when the child turns 2, etc.

China's demographics are allowing it to make huge leaps as the prime working and taxable segment of the population will rise in the coming years. Additionally, a relatively small segment of the population of elders will not impede the governments spending spree. Foote predicts the explosion of per capita income seen in China will not materialize to the same extent in India, as its population tree, a spinning top-like figure with a huge young population will limit the government's spending because of huge demands in new infrastructure and education. On the other hand, Japan is the fastest aging developed country. With virtually no immigration and its population already declining, Foote predicts the last Japanese to die by 3500 if predictions come true…

A more generous family policy, abolishing the 65 year retirement (as it was conceived at a time where most people did not live beyond this age for as many years as they do today) and redistributing more of the healthcare budget towards home care are all options that would soften the effects of a dwindling taxable bracket of the population. An aggressive immigration policy where Québec would accept more immigrants and better integrate them so as not to see as many leave for Toronto as they do now would also diminish the short term demographics effects of our low fertility rate…

Notes of all conference speakers can be found at www.desenfantspourlequebec.ca. ■

McGill's First Peoples' House,
Environmental Law McGill
and the Aboriginal Law Association of McGill present:

"Recovering Canada: Resurgence of Indigenous Law"

a lecture by Professor John Borrows,
University of Victoria, British Columbia.

Wednesday, 14 January, 2004 at 17h30 in the **Moot Court**

Professor Borrows will talk about his latest book of the same title. In it, he examines how Aboriginal law can be integrated into the Canadian legal system and lead to new approaches to the Canadian constitution and citizenship. He compares and contrasts Aboriginal stories and Canadian case law to highlight the similarities and distinctiveness of Aboriginal and non-Aboriginal ways of perceiving the world. Borrows argues for the importance of Indigenous law in confronting various problems facing modern Canadian society, including environmental degradation. He proposes the integration of Indigenous legal perspectives into Canadian law and policy as one path for both Aboriginal and non-Aboriginal peoples to reconcile with Canada's colonial history.

Professor Borrows is the leading Aboriginal law scholar in Canada today. He is Professor and Law Foundation Chair of Aboriginal Justice and Governance at University of Victoria, B.C. He teaches in the fields of Aboriginal law, Canadian constitutional law, environmental law and land planning. In 2003, he received the Aboriginal Achievement Award in Law and Justice. Professor Borrows is Anishinabe and a member of the Chippewa of the Nawash First Nations.

For more information about this event, please contact the Aboriginal Law Association: aboriginallaw@po-box.mcgill.ca

Bonne rentrée!

by Nicholas Kasirer, Dean of Law

One of the oddities of life at the Faculty of Law is that, however closely knit our community might feel, students and teachers often don't have a clear picture of what one another are up to "after class". No doubt that, in many respects, this is a good thing for our collective peace of mind. Yet professors have the advantage of watching student life from a distance as readers of the Quid Novi and, for the less timorous, surveying the landscape from a discreet corner at Coffee House. Students on the other hand rarely see their professors at work out of the classroom except in the highly charged or highly somnolent committees of faculty and university governance. What are those professors doing deep in the stacks of the Nahum Gelber Library or holed up all night in their offices?

Tout aussi importante qu'elle soit, la communication des connaissances faite par l'enseignant " du haut de sa chaire " n'est qu'un aspect de sa charge professorale. Poursuivie très largement à l'abri du regard des étudiants, la recherche fondamentale - les articles de revues, les conférences dans les colloques savants, les ouvrages de " doctrine " - est au coeur du quotidien de tout universitaire. Ceci est d'autant plus vrai à la Faculté de droit qui profite pleinement, comme nous le rappelle sagement la Principale de McGill à l'occasion, de sa place au sein d'une université à vocation de " recherche intensive ". Ce mot donc - bien qu'incomplet - sur quelques des faits saillants des derniers mois dans la vie des chercheurs de notre faculté.

This past term has been one of accomplishments and new beginnings for scholars working at the Law Faculty. The University has conferred the titles of Sir William Dawson Scholar and James McGill Professor on Stephen Smith and Lionel Smith respectively in recognition of their past work and their future promise as legal scholars. Both have just submitted major works to publishers - Steve Smith on theoretical aspects of contract law and Lionel Smith on the comparative law of trusts - and both have ambitious book projects planned for the next year. The publication of books is always a moment of special celebration in the Faculty. This fall, Professor Marie-Claude Prémont published a work on law and discourse intriguingly entitled *Tropismes du droit* (Montreal: Éd. Thémis, 2002), Professor Fabien Gélinas co-authored *Le règlement en ligne des conflits: Enjeux de la cyberjustice* (Paris: Romillat, 2003), and a team of scholars at work in the Faculty's Quebec Research Centre of Private and Comparative Law have published twin volumes of the *Dictionnaire de droit privé des obligations* and *Private Law Dictionary of Obligations* (Cowansville: Éd. Yvon Blais, 2002) as part of a longstanding project which seeks to account for the fundamental vocabulary of Quebec private law in French and English.

De nouvelles initiatives marquent le paysage de recherche à la Faculté depuis quelques mois. Le Centre des politiques en propriété intellectuelle, fondé l'an dernier, obtient une des plus importantes subventions jamais accordées à des juristes-universitaires pour une étude à long terme sur la propriété intellectuelle dirigée par le directeur du Centre, le professeur Richard Gold, avec les professeurs Wendy Adams et David Lametti ainsi que Me Elisa Henry. Quant à lui, le Centre de recherche en droit privé et comparé lance, sous l'impulsion de son nouveau directeur le professeur Jean-Guy Belley et sa collègue la professeure Rosalie Jukier, un projet de recherche visant à doter la Faculté - et le monde entier - avec les premières publications de taille portant sur l'enseignement trans-systémique. Avec un groupe de professeurs qui participent aux cours d'Obligations contractuelles et Obligations extra-contractuelles, le Centre préparera au cours des prochaines années des " workbooks " dans ces domaines qui témoigneront de l'originalité de notre démarche collective.

Throughout the fall, professors published learned papers in leading law reviews in Canada, the United States and Europe. Those occasionally rescheduled classes that took place last term may have reflected a professor speaking in England, France or Italy, in Baie-Comeau, Halifax or at UQÀM. Others worked on the editorial boards of journals based in Quebec and Ontario as well as on scientific committees of colloquia and learned societies at points east and west. Vous voyez - vos professeurs ne chôment pas!

DID YOU KNOW? LE SAVIEZ-VOUS? The Faculty actively encourages students to involve themselves in legal scholarship while they are students at McGill and thereafter. You will no doubt hear, for example, of the opportunity to serve on the editorial board of the *McGill Law Journal* for credit in the coming weeks. Some students take up the challenge of working for a professor or for one of the Faculty's research centres during the summer months, and I encourage you to watch for advertisements for these opportunities this spring. One of the best kept secrets in the Faculty is our programme of scholarships designed to support graduate work in law. Not only are entrance scholarships available at McGill for graduate studies in the Institute of Comparative Law and the Institute of Air and Space Law, but the Faculty offers a series of scholarships and travelling fellowships to graduating students interested in pursuing their legal studies at the masters or doctorate level in other universities. Inquire at the Office of Undergraduate Students for information and applications for the Thomas Shearer Stewart Travelling Scholarship (value $12,000 and more) and the Edwin Botsford Busteed Scholarship (value $5000 and more). A very unique prize is the Sir William Macdonald Travelling Fellowship. This fellowship was very generously endowed by a grand faculty benefactor many years ago to allow a graduating student from the Faculty to study law in France for a year. Its value is about $24,000. A chance to tell all of France about Matamajaw or the Quebec *Charter of Human Rights and Freedoms*! ■

What are those professors doing deep in the stacks of the Nahum Gelber Library or holed up all night in their offices?

Screw the French?

by Tara McPhail (Law III)

I have a confession to make. I'm an Albertan. That's right - I grew up in Canada's oil capital, in the heart of its largest beef and cattle industry, surrounded by the diversity of rocky mountains and rolling plains, and currently Canada's richest province.

According to a recent Quid article, however, I also grew up among something else - profound anti-French sentiment. In a piece appearing in the Quid last fall, a central Canadian amongst us took the liberty of pinning anti-Québec prejudice on a particular Canadian region - Alberta. In the author's precise words, Albertans are known for wanting to 'Fuck French and the separatist horse it rode in on.'

You'll have to excuse me for my boldness, but while I was dating a French Canadian, I can assure you that no horses, separatist or otherwise, were involved. And while Albertans certainly have their share of harmful stereotypes, this recent article proves that there's also a great deal of ignorance about Alberta here at McGill. (No, my father does NOT shoot at farm animals from our kitchen window in his underwear. Believe me - it's been suggested.)

Alberta is more than cowboy hats, cow dung, and the oilpatch, folks. Edmonton, for example, is home to North America's first mosque and is the only city in Canada, as a result of its vibrant Muslim community, to have adopted an Iraqi village to help rebuild after the second Gulf War. Calgary, home to the 'white hat' and the Calgary Stampede, also ties with Ottawa for the most university grads of any Canadian city, boasts the highest number of corporate head offices after Toronto, and is purported to have Canada's second largest Chinatown.

As for the anti-French prejudice (i.e., 'screw Québec' attitude), I'm not aware of it. My friends and family are typically envious of both my stay in Montréal and of my ability to speak French. While only 2.0% of Albertans identify French as their mother tongue, compared with 4.5% of Manitobans and 4.5% of Ontarians, French influence remains. Francophone explorers are reputed to have been the first Europeans to set foot on what's now Alberta, and their legacy includes a number of French communities in the province's north-eastern region with their own schools and cultural institutions. Even we Anglos are influenced by Alberta's French history - my protestant high school in St. Albert was actually part of the 'private' school system, as the Catholic School Board remains the public education provider.

Of course, you can always find a few Albertans who feel similarly towards Québec as they do about Trudeau's national energy policy. Some are even vocal about it. But after having lived in Whitehorse, Vancouver, Regina, Kingston, and Ottawa, in addition to St. Albert, Alberta, I can assure you that prejudice exists everywhere. A Quid article that thinks nothing of pinning the blame on Albertans for anti-French sentiment within Canada only proves this point. ■

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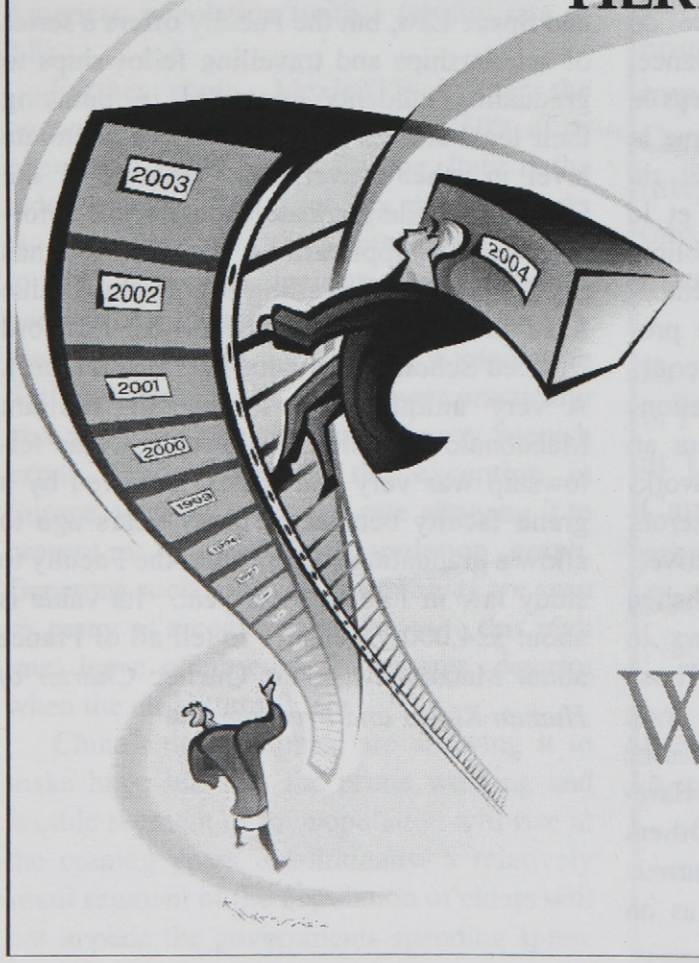

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PERSPECTIVES ON LATIN AMERICAN JUDICIAL REFORM
Strengthening Human Rights Protections: National Experiences, the Inter-American Contribution, and Canada's Role

Programme

THURSDAY, 22 JANUARY 2004

1:00	Registration
2:30 McGill Moot Court	**Opening Ceremony** ▪ Dean Nicholas KASIRER, McGill University, Faculty of Law ▪ Prof. François CREPEAU, Faculté de droit de l'Université de Montréal ▪ Viviana ITURRIAGA ESPINOZA, President, LALSA
PANEL I 2:45 to 5:00 McGill Moot Court	**Approaches to Judicial Reform: Goals & Lessons Learned** *Moderator: Prof. Patrick HEALY, McGill Faculty of Law* ▪ Mr. Pierre Gilles BELANGER, Department of Justice, Canada ▪ Prof. Douglass CASSEL, Northwestern University School of Law and President of the Board of the Justice Studies Centre for the Americas ▪ Prof. Alejandro GARRO, Columbia Law School ▪ Representative, The World Bank ▪ Dr. Luis RAMIREZ GARCIA, Institute for Comparative Studies and Criminal Law in Guatemala (ICCPG)

FRIDAY, 23 JANUARY 2004

7:00	Registration
PANEL II 8:30 to 10:30 McGill Moot Court	**Judicial Application of Constitutional Guarantees and International Human Rights Norms: National Experiences** *Moderator: Mr. Pablo ROMERO, General Consul of Chile in Montreal* ▪ Argentina: Dr. Victor ABRAMOVICH, Executive Director, Centro de Estudios Legales y Sociales (CELS) ▪ Colombia: Luz Marina MONZON, Comisión Colombiana de Juristas ▪ Guatemala: Justice Carlos Esteban LARIOS OCHAITA, President, Supreme Court of Guatemala ▪ Mexico: Prof. Sergio GARCIA RAMIREZ, UNAM and Judge at The Inter.-American Court of Human Rights
10:30 to 10:45	Health Break – Atrium
PANEL III 10:45 to 12:45 McGill Moot Court	**The Inter-American Human Rights System : Contribution to Domestic Judicial Reform** *Moderator: Prof. Nanette NEUWAHL, Faculté de droit de l'Université de Montréal* ▪ Mr. James CAVALLARO, Harvard Human Rights Programme, Justiçia Global ▪ Mr. Bernard DUHAIME, The Inter-American Commission on Human Rights ▪ Mr. Pablo SAAVEDRA, Secretary, The Inter-American Court of Human Rights ▪ Prof. Magdalena SEPULVEDA, United Nations University for Peace
12:45 to 2:30	Lunch – Thomson House (*Included in registration fee, otherwise, $10.00*)
PANEL IV 2:30 to 4:30 McGill Moot Court	**Canadian Adherence to the American Convention on Human Rights and its Future Role within the Inter-American Human Rights System** *Moderator: TBC* ▪ Prof. Lucie LAMARCHE, Université du Québec à Montréal and Director of CEDIM ▪ Ms. Geneviève LESSARD, Rights & Democracy ▪ Ms. Catherine VEZINA, Canadian Mission to the Organization of American States
4:30 to 5:30	Closing Reception – Atrium

Perspectives on Latin American Judicial Reform

Strengthening Human Rights Protections: National Experiences, the Inter-American Contribution, and Canada's Role

Thursday and Friday, 22 and 23 January 2004
McGill University, Faculty of Law

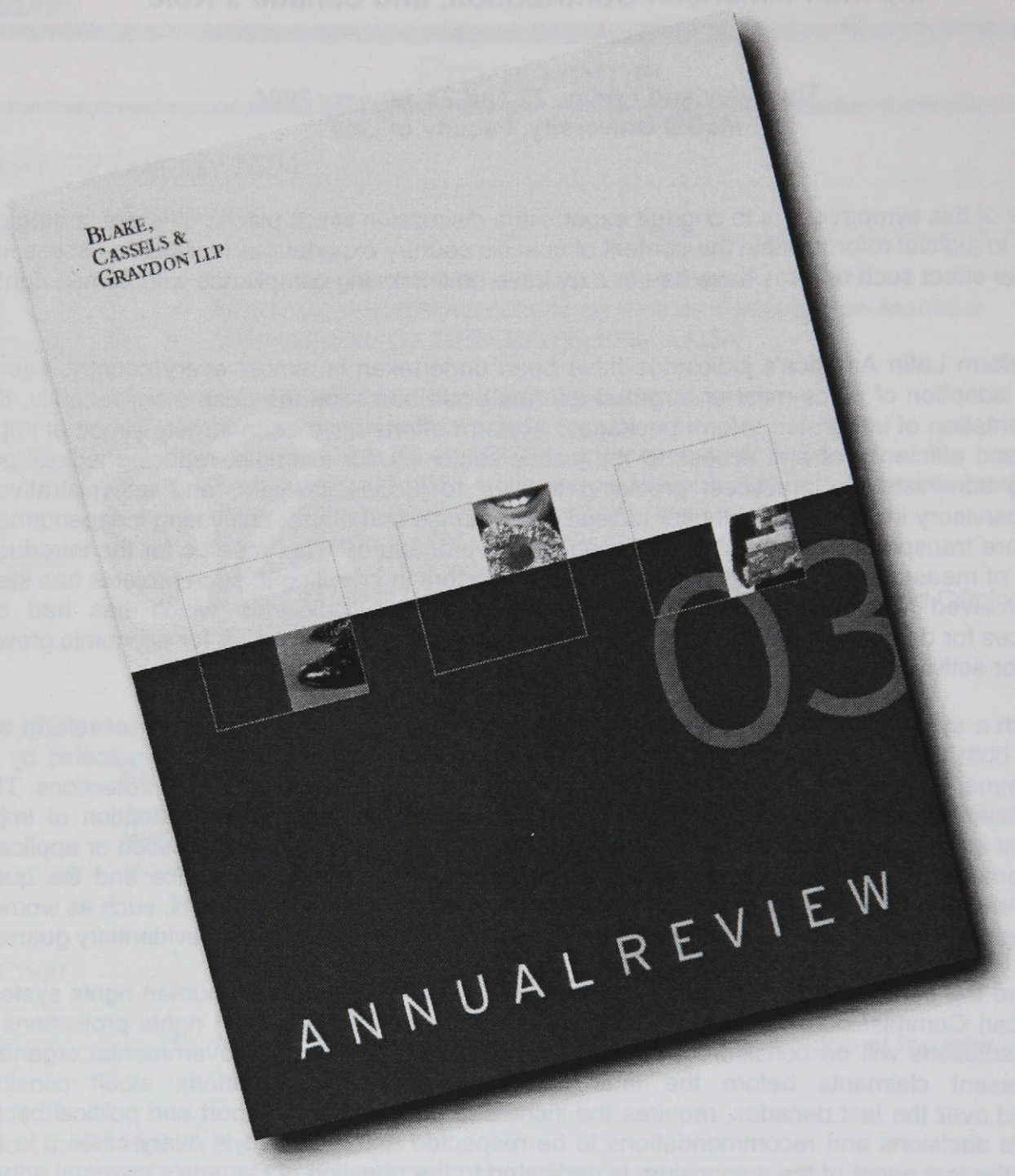
The purpose of this symposium is to engage experts in a discussion which places different strategies and approaches to judicial reform within the context of specific country experiences in order to assess, in particular, the effect such reforms have had or may have on improving compliance with human rights norms.

Efforts to reform Latin America's judiciaries have been undertaken in almost every country, sometimes through the adoption of piece-meal or targeted reforms or as has been the case more recently, through the implementation of integrated reform packages. Reform efforts have been largely aimed at improving the quality and efficiency of and access to the justice sector by, for example, reducing judicial poverty; modernizing administrative practices: providing training to judges, lawyers, and administrative staff; creating supervisory institutions to monitor judicial performance and ethics; cultivating independence; and adopting more transparent and merit-based appointment procedures. The impetus for the introduction of these types of measures and the significant interest by donors in investing in such projects has stemmed from a perceived weakness if not crisis within the region's judiciaries which has had serious consequences for democratic stability, the protection of human rights, as well as for economic growth and private sector activity.

Holding such a symposium provides an ideal setting in which to consider the priorities of reform and the factors that both favour and hinder this process. The symposium will emphasize, as indicated by its title and programme, the role that judicial reform can play in strengthening human rights protections. There is indeed a continuing gap between legal reforms which have given way to the adoption of important constitutional and treaty guarantees in the area of human rights, and the implementation or application of those guarantees by national judiciaries. Of particular concern is access to justice and the quality of judgments rendered especially in cases involving poor and marginalised populations, such as women and indigenous groups, as well as more generally, the enforcement of procedural and evidentiary guarantees.

In this regard the contribution of the supervisory organs of the inter-American human rights system, the Inter-American Commission and Court, to the process of consolidating human rights protections within national jurisdictions will be considered, as well as the role played by non-governmental organizations which represent claimants before the inter-American system. This System, albeit considerably strengthened over the last decades, requires the increased participation, support and political backing of States for its decisions and recommendations to be respected and executed in every case. It is for this reason that the last panel of the symposium is dedicated to the question of Canada's eventual adherence to the *American Convention on Human Rights* and its increased participation within the inter-American system.

This symposium will be a joint collaboration of the Revue québécoise de droit international (RQDI), McGill University's Latin American Law Student Association (LALSA), and the law faculties of the University of Montréal and McGill University, where it will be held on January 22 and 23, 2004. Participants and panel chairs will be composed of experts on judicial reform, officials from the Inter-American Commission and Court of Human Rights, academics from the three Montreal law faculties, representatives of the Canadian government, and members of non-governmental organizations with special expertise and experience relating to the inter-American system. It is also expected that students from all three Montreal law faculties with an interest in human rights, justice reform, comparative and constitutional law, Latin America, and Canadian-Latin American relations will learn from and contribute to discussion.



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Analyse du discours séparatiste de Marc-André Séguin

par Antonio Iacovelli (Law II)

J'aimerais d'abord vous souhaiter une bonne année en 2004 et un bon retour aux études!

Ce fut très agréable de voir qu'un bon nombre d'étudiants affairés de la Faculté ont néanmoins pris le temps de rejeter la dite petite leçon d'histoire de Marc-André Séguin. Naturellement, notre chœur de critiques nous a obtenu une apologie, en français cette fois, de la part du soi-disant historien. Cependant, M. Séguin n'a malheureusement fait aucune référence notable aux questions pertinentes que nous avons soulevées et qui se méritent maintenant une réflexion plus soignée.

Nous avons tous été tous dérangés, et avec raison, par les allusions injustes et malheureuses de M. Séguin à l'égard des Québécois anglophones. De tels propos généralisés sont inacceptables et ceci surtout dans le journal de notre Faculté.

Nous étions tous dérangés, et avec raison, par les allusions injustes et malheureuses de M. Séguin à l'égard des Québécois anglophones. De tels propos généralisés sont inacceptables et ceci surtout dans le journal de notre Faculté.

Voulant corriger sa maladresse, M. Séguin réclame qu'il ne généralisait pas les faits historiques dont il traitait à la totalité de la communauté anglophone. D'ailleurs, M. Séguin dit que son approche à l'histoire se voulait sévère. Au contraire, son traitement des histoires des Patriotes et du crime d'incendie de 1849 est carrément déficient et plutôt grossier. Si le mouvement séparatiste prétend mettre tant l'emphase sur l'histoire, il est lamentable qu'un de ses défenseurs parmi les mieux instruits saisisse si mal les subtilités de cette même histoire!

L'article de M. Delisle (Quid Novi, 25 novembre 2003) tire les choses au clair quant à l'histoire des Patriotes. Mais pour ce qui est du crime d'incendie de 1849, notons que M. Séguin omet de clarifier que ce fut des militants enivrés d'un parti politique en particulier (les "Tories") qui mirent feu au Parlement. Cet incident disgracieux fut un exemple de l'arrogance d'une faction politique (et socioéconomique!) bien précise au sein de la communauté anglophone de l'époque. Pourtant, nous fiant à notre collègue, nous penserions que ce fut tout simplement "another demonstration of Anglophone arrogance". Les choses ne sont jamais aussi simples. Hélas, il faut que nous nous demandions pourquoi est-ce que la version des faits qui convient le plus à l'ordre du jour séparatiste soit celle qui est la plus grossière et dangereuse.

De fait, le discours de M. Séguin est très dangereux puisqu'il semble vouloir nier l'existence de diverses opinions politiques parmi les membres d'un groupe ethnique. De toute évidence ce ne fut pas tous les Québécois d'expression anglaise qui militaient pour les Tories tout comme de nos jours les Québécois anglophones n'appuient pas tous un seul parti politique. Le discours réductionniste de M. Séguin cherche à caricaturer les protagonistes de l'histoire canadienne. C'est facile de parler uniquement de Canadiens français et d'Anglophones en termes de "nous contre eux", mais celui-ci devient un discours nationaliste ethnique qui nous prend au piège et nous empêche d'apprécier toutes les motivations humaines au cours de l'histoire.

M. Séguin se dit ne pas être un nationaliste ethnique. Il affirme que son idéologie n'a rien à voir avec l'ethnicité et qu'elle est inclusive. Je trouve cela insincère pour deux raisons.

Premièrement, bien qu'il veuille se montrer inclusif, M. Séguin ne s'est jamais porté dans son premier discours à qualifier les dits Anglophones de québécois. C'est vrai que cela n'est qu'une nuance mais parfois ça ne prend qu'une nuance pour nous diviser comme un abîme.

Le discours réductionniste de M. Séguin cherche à caricaturer les protagonistes de l'histoire canadienne. C'est facile de parler uniquement de Canadiens français et d'Anglophones en termes de "nous contre eux".

Deuxièmement, M. Séguin constate que la séparation du Québec assurerait la "protection de notre culture face à l'assimilation". Cette phrase est problématique parce qu'elle élude une question fondamentale. M. Séguin prend pour acquis qu'il n'y ait qu'une seule et objective culture ou identité québécoise que tous les Québécois interprètent et réalisent pareillement. Notons que nous voyons cette même tendance de M. Séguin à vouloir monopoliser des symboles culturels au sujet du sens de la devise québécoise.

Je me demande si, selon M. Séguin, la possibilité qu'un Anglophone québécois fasse face à l'assimilation dans une marée francophone menacerait autant "notre culture"…

Quoiqu'il en soit, en traitant cette fameuse et néfaste force de l'assimilation dont "notre culture" est le point de mire et de laquelle "nous" devons nous protéger, notre collègue élude de nouveau la question. Bien entendu, les Québécois n'aperçoivent pas tous cette menace comme M. Séguin l'aperçoit. Nous ne nous voyons pas tous en tant qu'enfants ayant besoin de sa protection paternaliste. Les Québécois sont intelligents et savent s'arranger très bien avec la richesse d'avoir deux identités, québécoise et canadienne. Plusieurs d'entre nous en avons même plus que deux.

De plus, dans cette ère postmoderne, aucun ethnologue respectant sa discipline ne se servirait d'un terme aussi grossier et insidieux que "assimilation". C'est une notion incorrect, dépassée, et alarmiste n'ayant aucune place dans un discours franc et académique mais qui se trouve trop souvent dans le répertoire des démagogues.

En conclusion, j'aimerais aborder le sujet de la démocratie et le désir d'autodétermination. Notre pays n'est pas parfait. Par contre, aucun pays ne l'est et la séparation du Québec ne serait surtout pas une divine panacée. Le Canada est parmi les fédérations les plus flexibles et décentralisées au monde. En outre, c'est une fédération fondée sur des principes de démocratie et de libertés protégées par la Loi, comme la voulait le Patriote Sir George Étienne Cartier. Grâce à ces principes, nous avons les outils pour nous assurer que la langue française, les "nations québécoises", et toutes les autres nations que notre enviable fédération canadienne héberge continuent de prospérer. Alors arrêtons les guéguerres et laissons tomber nos rancunes. C'est à nous de faire en sorte que le Canada réussisse. ■

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Six Game Win Streak - Is that some kind of Record!?!

by Kirsten Mercer (Law I)

Superior Force / Force Majeure ended 2003 with another convincing victory, this time over the Pink Panthers. In the last week of the semester, the Force exorcised some of their pre-exam stress on the unsuspecting Panthers. Undeterred and undistracted by the pink leggings of the opponent, Force net-minder Jason MacLean earned his first shut-out of the season in the team's 6-0 victory. Superior Force/ Force Majeure ended the first half of the season, with yet another victory, shoo-ing their feline foes out into the night.

The early seconds of the first game of 2004 against the five-player-strong Muppet Raiders proved a flurry of confusion and fear for Coach K and the team. Unfamiliar as the team is with being behind on the score board, the Muppets' early goal provided the Force with rude awakening; the cold slap of realization that the semester and the second half of the hockey season has begun!

This unfamiliar "zero" on the score board did not last long. The Force was led to an 8-2 victory by Pierre-Olivier Savoie's hat-trick-with-a-spare, extending their win streak to six games.

Shmuel Szilagyi scored first, for his first of the season, followed by two from Pierre-Olivier. Defenseman and Captain Bram Abramson chipped in with goal number four, and Bob Moore ended off the first period with a solid goal after a number of close misses.

In the second period, the "Pierre-Olivier Goal Scoring Clinic" continued with goals number six and seven. Pierre Covo tipped in goal number eight on Bram's shot from the point.

Though the win-streak continued, and the team's domination of McGill intramural d-league hockey remains unchanged, 2004 has arrived with a number of dramatic developments for the Force. First, the promise of a whole new level of team cohesion looms with the addition of team jerseys! (See elsewhere in the Quid to find out how you can submit your design for the team's logo!) Second, consensus on the translation of the team name seems to be building. It is felt by many that use of the French "Force Majeure" will serve to further confuse and subdue our opponents. Finally, and most importantly, the players seemed to have some difficulty hearing the coach from the bench due to the throngs Faculty Fans in the stands. A welcome development, the team heartily thanks the fans for their support!

Following the game, the fans joined the team for pizza and pints at Thompson House, where good times were had by all!

The Force's next game is at 1pm on Sunday, Jan. 18th. I'm not saying that fans WILL be rewarded with pizza and beer (not to mention a great time!), but I'm not saying that they WON'T, so come out on Sunday afternoon and support the team as they fight to extend their amazing win streak to seven games. ■

The Detention of Mr. Khan

by Naomi Kikoler (Law I)

Mr. Khan's detention review hearing did not go very well. Perhaps that was to be expected since his fate was left to the mercy of those attending the Human Rights Workshop on Detention on November 19 led by Me. Catherine Gauvreau of Action Réfugiés Montreal. Given that most of us had little experience with the issue of the detention of asylum seekers, we were ill-equipped to mount a stirring defence of Mr. Khan. We tried to explain away his use of an assumed identity, and on humanitarian grounds argued for his release from detention. Yet, the Action Réfugiés Montreal volunteers in the room were quick to inject a healthy dose of reality by donning their Immigration Officials' hats and rejected our claims.

Detention and immigration in general is a contentious issue these days. Immigration policy in the post 9-11 world has increasingly been viewed in a security paradigm that tends to equate refugees/asylum seekers with security threats - legitimizing the use of existing and newly enacted restrictive immigration policies, as well as the often xenophobic political rhetoric espoused by politicians. For the most part, Canada has escaped the hysteria that has resulted in an immigration backlash in such places as the 'Fortress of Europe' and Australia.

Canada does not enforce a system that calls for the mandatory detainment of all asylum seekers on arrival as Australia does. Nor do we run centres that generate the same amount of concern over the violation of basic human rights that theirs do. As a result, we have not witnessed the riots that occurred at centres there, nor have we had detainees, some as young as 14, sew their own lips together as a form of protest. We have not done as some European countries have and attempted to close our borders entirely to asylum seekers. Denmark deserves honourable mention in this category for being especially efficient in reducing numbers. Nor do we publish photos in our newspapers of where asylum seekers live or refer to them as criminals and threats as occurs in the UK. And finally, we also do not have on a regular basis politicians calling for more detention as a means of dealing with the supposed asylum "emergency," also common in the UK.

So now that we all feel good about ourselves we can just sit back and revel in the esteemed status that our system has. Right? Wrong. While our immigration system is considerably better and more progressive than many of our counterparts, complacency on this issue is not acceptable. The workshop highlighted that improvement is needed and that in particular the lack of adequate resources serves to undermine the effectiveness of the system.

Canada detains individuals in immigration detention centres on three primary grounds: if they are believed to pose a risk to the public, if their identity is unknown, or if they are deemed to be a flight risk. In the average week, around 655 individuals are in immigration detention in Canada. Once in the detention centre, the asylum seeker has the right to have his or her case reviewed within the first 48 hours, then in 7 days, and then every subsequent 30 days. Even with this guarantee, detainees have been known to languish in detention centres for months at a time as their case is being reviewed. In one such case, a refugee claimant who is unwilling to provide information about his identity has been in the detention centre in Laval for 27 months.

Spending even one night in a detention centre can be a harrowing and frustrating experience for asylum seekers. Faced with often crowded conditions, little contact to the outside world, few activities to keep them occupied within the centres, and limited access to psychiatric assistance, the mental well-being of detainees deteriorates. Their notion of self-worth is further eroded as a result of the stigmatization that many feel as a result of being placed either in a prison directly with criminals, or in a detention centre that resembles a prison. Given that minors are placed in immigration detention centres when it is deemed to be in their best interest, one has to wonder what impact the isolation and stigmatization has on their psychological development.

Yes, our detention system is better than most countries. But there is room for improvement. If we are going to maintain that detention is an essential part our immigration policy then we should ensure that our policy is enforced with the utmost care for respecting the needs and rights of those being detained. While it is easy to equate detainees with criminals, what needs to be remembered is that for the most part these people pose no threat to our society. We are detaining children, families, and individuals who in many cases are refugee claimants. They are survivors who wish to contribute to the society that they are trying to become members of. As a result, it is not in the best interest of Canadians to create detention centres that are only conducive to depression rather than to ensure that once the detainees are released they will be able to become functioning members of society. To protect their, and Canadians' interests, the government needs to ensure that there is consistency in our detention policy and in the investment of resources needed to maintain that system.

These were just a couple of the issues that were raised during the latest John Peters Humphrey Human Rights Workshop. Stay tuned for information about upcoming workshops. ■

Apology to Marc-André Séguin from Renee Darisse

The quote attributed to Marc-Andre Seguin (as well as all quotes attributed to any person in the article "McGill Faculty of Law to Strictly Enforce new No-Talking Regulations in Classrooms", *Quid Novi*, November 25, 2003) was completely fictitious and Renee apologizes to Mr. Seguin for any damage to Mr. Seguin or his reputation that may have resulted.

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NEW STUDENT E-MAIL POLICY

This policy is effective January 1, 2004.

Introduction

As a service to students, the growing need for timely and efficient communication requires that McGill University institute a policy establishing e-mail as an official means of communicating with students. In order to implement e-mail as an official means of communication between the University administration and students, timely receipt of announcements and notifications must be guaranteed. To this end, e-mail routing must be confined to the University's network, and delivery to the official e-mail address must be verifiable.

Policy statement

E-mail is one of the official means of communication between McGill University and its students. As with all official University communications, it is the student's responsibility to ensure that time-critical e-mail is accessed, read, and acted upon in a timely fashion. If a student chooses to forward University e-mail to another e-mail mailbox, it is that student's responsibility to ensure that the alternate account is viable.

Procedures

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Further information on the McGill e-mail policy may be found at:
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PER TERM CREDIT MINIMA

All undergraduate students registered in the BCL/LLB programme are reminded that Faculty Academic Regulations require them to be in full-time attendance at the Faculty. Full-time attendance obliges students to register for no fewer than twelve credits in each term, with the exception of their final term should a lesser number of credits be required for the obtaining of their degrees.

Under special circumstances, students may apply to the Associate Dean (Academic) for permission to pursue their degrees on a part-time basis. For further information, please consult the Faculty Academic Regulations (copies available for consultation at the OUS).

Véronique Bélanger
Doyenne adjointe aux études de premier cycle
Assistant Dean (Student Affairs)

Skit Nite: Call for action!

by Ken McKay (Law III)

Skit Night is rapidly approaching (the tentative date is March 11th with the possibility of being moved to March 18th). We are still looking for a lot of help in filling critical operations roles for the event. We understand that in our last call we encouraged you to begin getting serious about studying AND Skit night. In hindsight that was a horrible suggestion. Due to the muted response regarding the latter (undoubtedly you all focused too much on your studies so we accept the blame for the response) we are now encouraging you to merely get serious about Skit Night. There are many reasons to get involved. First it is for a good cause - the night generates significant revenue, which is donated to local charities. This is a long-standing tradition, which is reason enough to get involved. Secondly it is a lot of fun - the positive energy surrounding the event is fantastic and as the event approaches the energy can be felt throughout the faculty (students and faculty members alike). Third it is a great way to get to know your fellow law students in a fun social context outside of the classroom. Fourth it is an avenue to apply your creative talents. Fifth it is a great party! The rehearsals and event day parties are the perfect way to deal with pre-exam stress. And finally it is rumoured that involvement in Skit Night might become recognised for credit. (Though the source of the rumour might not be credible. I am not sure but it might have actually just been in one of my dreams - the point is I was tired when I wrote this article).

There is no predetermined requirement to getting involved in the show - enthusiasm is about the only prerequisite. To ensure the success of the following roles need to be filled: **1) band leader, 2) band members, 3) dance director, 4) video specialist, 5) show caller, 6) ticket manager, 7) fundraisers, and other important support roles.** Get involved, be part of the fun and excitement and contribute to a worthy cause. Let us know if you are interested in getting involved at **kenmckay@videtron.ca.**

Saddam, a Firing Squad and the Demise of the Rule of Law

by Jason D. Söderblom (Australian National University Faculty of Law student, and Quid fan)

After several months of CIA interrogation, Saddam Hussein will stand trial before an Iraqi court. His ultimate fate, says U.S. President George W. Bush, will be decided by the Iraqis. The former members of the Iraqi Ba'ath government and others accused of crimes against humanity and genocide will also be tried in the Iraqi special court. In reality however, the U.S. has an additional motive in promoting a local trial in lieu of an international tribunal such as a United Nations (U.N.) ad-hoc criminal tribunal.

A local trial of Saddam Hussein can be used to prevent Saddam publicly adducing evidence of his previous liaisons with U.S. Governments. This prevents serious analysis of the intimate cooperation between the U.S. and Iraq during the Iran-Iraq war (1980-88) as a case in point.

Though promoting a local (Iraqi) trial, the U.S. (or their appointments) can limit Saddam discussing 'how' he acquired biological weapons like west nile virus, anthrax, small pox, and botulin toxin. A discussion of 'why' the Ba'ath regime were given biological and chemical weapons and science can also be avoided. The claim of course, is that the U.S. under President Reagan armed the Ba'ath party with such weapons.

A local trial of Saddam Hussein can be used to prevent Saddam publicly adducing evidence of his previous liaisons with U.S. Governments.

One solution employed to avert U.S. embarrassment is to manipulate Saddam's trial. The potential to do so is premised on the U.S. ability to maintain influence over the mode of trial conducted. As such, the U.S. have asserted that they will work with the Iraqis to achieve a trial that 'withstands international scrutiny'. But the mode of trial suggested, as the following analysis illustrates, will not withstand international scrutiny and merely serves U.S interests.

The George W. Bush administration has shown little interest in conducting fair trials. The breach of international humanitarian and human rights law at Guantánamo Bay is manifest. The rights contained in the U.N. Covenant on Civil and Political Rights (ICCPR), and the Third Geneva Convention dealing with Prisoners of War (both ratified by the U.S.) were early victims of the U.S. perversion of a 'fair trial' at Guantánamo Bay.

This is not to say that Saddam Hussein should not be tried for his crimes. To the contrary, the victims of Saddam's crimes deserve to see justice done and have justice seen to be done. The record of Iraqi atrocities and Saddam Hussein's heinous involvement should be complete and uncensored. A 'fair trial' facilitates the telling of the whole story. Iraqi history deserves a complete record of events, the most accurate narrative as can be unearthed, not a version vetted by the U.S. spin doctors. If a fair trial involves Saddam providing a narrative of U.S. agendas and arms racing then so be it. Establishing good governance and an effective judiciary requires that Iraq restarts its post-Saddam era with a clean slate.

The U.S. and the new Iraqi government and Iraqi judiciary must therefore respond to Saddam's 'rule by force' governance by demonstrating their commitment to the 'rule of law'. Thus, any court that seeks to prosecute Saddam must be convened upon legitimate authority. It must be independent and impartial, and it must afford 'due process' of law. Anything less would violate not only international law, but would set the scene for other acts that offend the rule of law in this early stage of rebuilding Iraq.

The Iraqi Special Tribunal announced by the Iraqi Governing Council, a week before Saddam's capture, does not meet these objectives.

Firstly, the Muslim world will perceive this tribunal as illegitimate. A court convened solely by an occupying army, is seen as victor's justice, an expression of power politics, not law.

The Iraqi Governing Council (IGC) was appointed by the Coalition Provisional Authority's (CPA) Administrator, Paul Bremer on 13 July, 2003. IGC members have been appointed by the CPA. The IGC were handpicked by the U.S. or at least in close consultation and agreement with the U.S. The IGC is thus easily viewed as a puppet of the U.S. and will fuel allegations of imperialism.

The appearance of victor's justice is reinforced by the tribunal's deceptively narrow scope of jurisdiction. Most criminal courts in the world can prosecute crimes committed in their territory. It is, after all, their 'sovereign right'. The Iraqi tribunal, however, can only prosecute Iraqi nationals and residents. The scope of its territorial jurisdiction has been manipulated to ensure that U.S. citizens cannot be tried. Furthermore the tribunal does not ensure that guilt must be proven 'beyond a reasonable doubt'. Contrary to the legal standard employed in the U.S. and in most developed countries but not in the Iraqi special tribunal.

Secondly, doubts are raised by the tribunal's standards of criminal responsibility. It makes superiors responsible for crimes by their subordinates, and allows soldiers to be convicted for following orders, more easily than does the International Criminal Court or U.S. courts. Washington does not apply this standard to their own military, yet they think it perfectly acceptable to impose this standard upon Iraqis.

Thirdly, the judges of the Iraqi Special Tribunal must be both impartial and seen to be impartial. Yet the statute is undecidedly partial, and is void of any serious attempt toward impartiality. It imposes a blanket disqualification on all judges who were members of Saddam's Ba'ath party. To be sure, many of the Ba'athist judges should indeed be disqualified. Yet some who went on to become judicial officers joined the party not as partisans but because it was the only road to professional advancement in a one-party state. On this issue, I think Doug Cassel, the Director of the Center for International Human Rights of Northwestern University School of Law sees the dilemma clearly. Cassel has commented that "Once all Ba'ath judges are disqualified, who will be left? Mostly judges who were victims to Saddam's regime. They or their ▶

family members were imprisoned, tortured or forced into exile by Saddam. No credible legal system allows victims to sit as judges in the trial of the alleged perpetrators."

The better solution for reviving the 'rule of law' in Iraq is to look for modern methods of overcoming trial by victim and trial by mob. The statute of the Governing Council does permit, if it deems necessary, the appointment of non-Iraqi judicial officers. The court is required to have international advisers and monitors, but they will advise and monitor, not judge. As of 19 December, 2003 the Bush Administration has not made an irrevocable commitment to submit Saddam to the Iraqi special tribunal for trial. In view of the foreseeable shortcomings of the tribunal, a 'rule of law' and transparency compliant tribunal must be created.

Using the International Criminal Court (ICC) as an alternative to an Iraqi trial of Saddam Hussein is not practicable in this instance. The fact that neither Iraq nor the U.S. have ratified the Rome Statute of the ICC will not of itself prevent the ICC trying this case. The power of the U.N. Security Council to refer a case to the ICC overcomes this hurdle. Although nine Security Council member votes would be needed to engage the ICC, any veto by the five permanent members would spoil this initiative.

The real hurdle, however, is that the ICC has no power of retroactivity. The ICC only has jurisdiction over crimes committed after the court came into existence (1 July 2002). Saddam's crimes committed before this date, such as the 1988 'Anfal' attack on Iraqi Kurds, and the poison gas attack on Halabja in February 1988 cannot be prosecuted at the ICC.

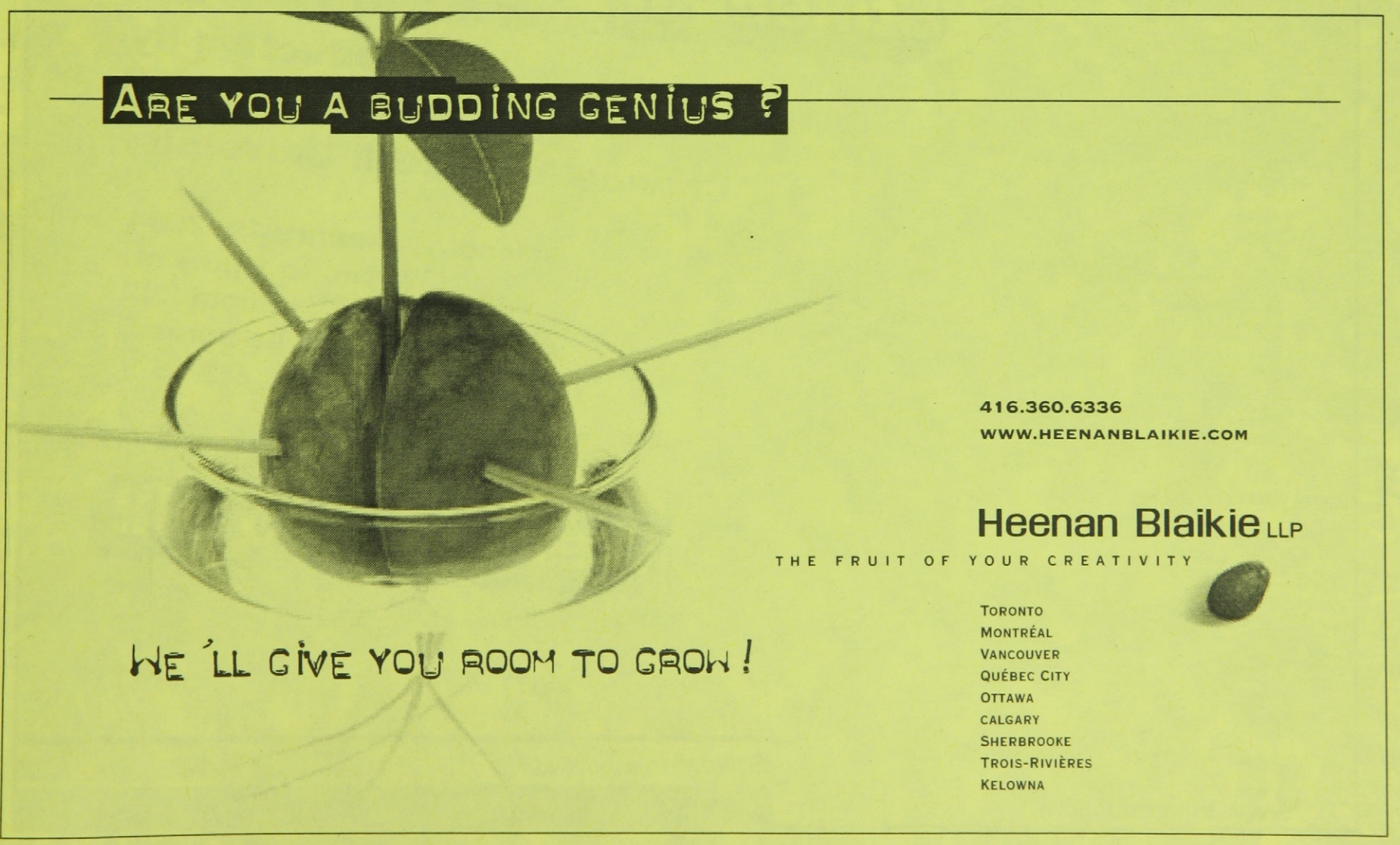
A hybrid court with retroactive power like that found in the Statute of the Special Court for Sierra Leone could strike a balance between reviving Iraq's judicial system and compliance with rule of law standards.

A hybrid court of local Iraqi judges and international judges such as that used in the Special Court for Sierra Leone might provide the outcome that pleases the international community, including Iranians and Iraqis.

A hybrid court with retroactive power like that found in the Statute of the Special Court for Sierra Leone could strike a balance between reviving Iraq's judicial system and compliance with rule of law standards.

On one hand a hybrid tribunal serves a rehabilitative role of reviving the local Iraqi judicial system through involving Iraqi judges. One the other hand, the active participation of international judges provides the crucial perception and legitimising fabric of a fair trial through impartiality. A hybrid court would also implicitly acknowledge that not all of Saddam's victims were Iraqi.

We must understand that as Iraqis wake from the nightmare that was Saddam Hussein, global leadership through 'rule of law' is more important now than ever before. To promote a contrived trial of Saddam and other Ba'ath party members will set a dangerously low precedent for future Iraqi Governments. ■



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